

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL
THE
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
AND THE
COUNTY OF LIVINGSTON
**FOR COORDINATION OF THE SETTLEMENT FUNDS RECOVERED PURSUANT TO
DECEMBER 23, 2014 SETTLEMENT AGREEMENT WITH AKZONOBEL**

I. INTRODUCTION

This Memorandum of Understanding for Coordination of the Settlement Funds (hereinafter, "Agreement") by and between the New York State Department of Environmental Conservation (hereinafter, "NYSDEC"), the New York State Department of Law through the Attorney General (hereinafter, "OAG"), and Livingston County (hereinafter, "County"), collectively referred to as the "Parties," is entered into in recognition of their common interests and responsibilities in addressing impacts from the March 1994 collapse and subsequent flooding of the Retsof Salt Mine (hereinafter, "Incident").

This Agreement provides the framework for the use and expenditure of Twenty Million Dollars (\$20,000,000.00) in Settlement Funds, together with interest accruing thereon following receipt, which the Parties recovered pursuant to a Settlement Agreement with Akzo Nobel Salt, Inc, a subsidiary of Akzo Nobel, Inc. (collectively, "AkzoNobel"), dated December 23, 2014 (hereinafter, the "Settlement"). A copy of the Settlement is attached as Exhibit A. The Settlement Funds were deposited in the Attorney General Account (Key Bank Account [REDACTED]; hereinafter, the "Settlement Account") pursuant to the Settlement, solely for use by the Parties as described in this Agreement.

This Agreement will serve as the Separate Agreement described in Section II of the Settlement.

II. LEGAL AUTHORITY

The State and the Department of Environmental Conservation (NYSDEC) Commissioner are stewards and trustees of the natural resources of New York State¹

¹ On November 30, 1987, Governor Cuomo appointed the Commissioner of Environmental Conservation to be the Trustee for New York State's natural resources under applicable federal law, including the Comprehensive Environmental Response, Compensation and Liability Act, the Clean Water Act, and the Oil Pollution Act, complementing the Department's responsibilities under the New York Environmental Conservation Law, Article 12 of the New York Navigation Law, and other applicable law.

and are responsible for the protection, conservation and management of those resources, including groundwater, for current and future generations.

The State and the Department of Law through the Attorney General are authorized as *parens patriae* under the public trust doctrine to redress harm to the State's natural resources.

The County of Livingston is a local government directly affected by the Retsof Salt Mine collapse, and has been and continues to be directly involved in efforts to respond to mine collapse impacts.

III. PURPOSE

The Parties agree that the purpose of this Agreement is to govern the use of the Settlement Funds, together with any interest accruing thereon, jointly recovered by the Parties pursuant to the Settlement.

The Parties understand that the Settlement Funds, as outlined in the Settlement and supported by NYSDEC Commissioner Policy 44 (attached as Exhibit B), address Natural Resource Damages (NRD). As such, the Settlement Funds shall not be available to fund any expenditure of any sort unless a clear nexus can be shown between the expenditure and NRD suffered as a result of the Incident.

Accordingly, the Settlement Funds shall be used by the Parties for the sole purpose of assessing and addressing impacts from the Incident and to protect and restore the environment, natural resources, and impacted infrastructure in the vicinity of the Retsof Salt Mine.

Impacts from the Incident include any and all consequences and effects of the mine collapse and flooding, including movement, migration or release of water, brine or other substance(s) from the Retsof Salt Mine, degradation of groundwater or surface waters, surface subsidence, and damage to infrastructure.

IV. PARTY REPRESENTATIVES

A. Party Representative Designation.

- a. The Regional Director of DEC Region 8 shall serve as the Party Representative for NYSDEC under this Agreement.
- b. Jennifer Nalbone, Environmental Scientist, shall serve as the Party Representative for the OAG under this Agreement.

- c. Ian M. Coyle, County Administrator, shall serve as the Party Representative for the County under this Agreement.
- B. Party Representative Replacement. Each Party may, by written notification to the other Parties, change its Party Representative designee.
- C. Function of Party Representatives. Each Party's Representative shall serve as a primary point of contact between the Parties with respect to the obligations created in this Agreement and any subsequent modifications thereto.

V. ALLOCATION AND USE OF FUNDS

- A. General Use. The Settlement Funds and accrued interest shall be used solely to address impacts from the Incident in accordance with the Purpose of this Agreement. No portion of the Settlement Funds shall be used to fund: (i) legal fees; (ii) settlement of private property claims; or (iii) the County's customary and usual maintenance, repair, or improvement of public or private water supply infrastructure not related to the Incident. Any use of the Settlement Funds must be consistent with all applicable procurement requirements, and shall be limited to the incurrence of costs after the date of this Agreement.
- B. Allocation of Funds. The Settlement Funds shall be divided into four separate accounts for use as necessary consistent with the Purpose of this Agreement described above. These four separate accounts, subject to change by mutual written agreement of the Parties, shall be established from the Settlement Account as set forth below:
 - a. Eleven Million Dollars (\$11,000,000.00) plus prorated accrued interest shall be deposited into an account dedicated to water supply infrastructure improvement, repair and maintenance relating to the Incident. This account shall not be available for any customary or usual infrastructure improvement, repair, or maintenance. This account shall be maintained and managed by the County subject to reporting by the County and reasonable review and input by NYSDEC and OAG. Details and deposit instructions regarding this account are attached as Exhibit C.
 - b. Five Million Dollars (\$5,000,000.00) plus prorated accrued interest shall be deposited into an account dedicated to surface water and water supply improvement and protection projects to protect the drinking water sources for the communities impacted by the Incident. This account shall be maintained and managed by the County subject

to reporting by the County and reasonable review and input by NYSDEC and OAG. Details and deposit instructions regarding this account are attached as Exhibit D.

- c. Three Million Dollars (\$3,000,000.00) plus prorated accrued interest, minus the one-time reimbursement to OAG explained below, shall be deposited into an account dedicated to monitoring groundwater and subsidence within the area affected by the Incident. This account shall be maintained and managed by NYSDEC subject to reporting by NYSDEC and reasonable review and input by the County and OAG. Details and deposit instructions regarding this account are attached as Exhibit E.
 - i. OAG shall retain a one-time payment to reimburse it for expert consultant costs previously incurred in monetizing the impacts from the mine collapse. This one-time payment, expected to total Twenty-Four Thousand Nine Hundred Twenty-Five Dollars and One Cent (\$24,925.01), will be retained from the funds that would otherwise have been allocated to the account dedicated to monitoring groundwater and subsidence within the area affected by the Incident. Consequently, the account dedicated to monitoring groundwater and subsidence is expected to have an initial balance of Two Million Nine Hundred Seventy-Five Thousand Seventy-Four Dollars and Ninety-Nine Cents (\$2,975,074.99) plus interest accrued on the full Three Million Dollars (interest on \$3,000,000.00).
- d. One Million Dollars (\$1,000,000.00) plus prorated accrued interest shall be deposited into an account dedicated to providing a contingency fund (possibly in the form of an insurance policy) to address potential future harms from the Incident. This account (including any insurance policy purchased with funds from this account) shall be maintained and managed by the County subject to reporting by the County and reasonable review and input by NYSDEC and OAG. Details and deposit instructions regarding this account are attached as Exhibit F.

C. Reports and Deliverables.

- a. Budgets. Annual budgets for proposed expenditures from each of the four accounts shall be submitted, on or before June 1st of each year, by the Party responsible for maintaining and managing each account to the other Parties for their review and comment. Annual budgets shall include a scope of work, i.e., a description of every project anticipated

for the period covered by the budget. Annual budgets shall follow the template attached as Exhibit G.

- i. Deadline for First Annual Budgets. The first annual budgets for proposed expenditures from each of the four accounts shall be submitted to the other Parties within two months of the date on which this Agreement is executed.
 - ii. Budget Updates. If a new project is proposed after the annual budget for the year has already been submitted to the other Parties, an updated budget shall be submitted to the other Parties within two months. The updated budget shall be an accurate representation of all proposed expenditures for the remainder of the year.
- b. Accountings. A detailed accounting of all actual expenditures from each of the four accounts during the past year shall be submitted annually, on or before June 1st of each year, by the Party responsible for maintaining and managing each account to the other Parties for their review and comment. Accountings shall consist of a reconciliation of planned expenditures to actual expenditures, and shall include a description of work completed on each project during the period covered by the accounting. Accountings shall follow the template attached as Exhibit H. The Parties agree to retain records related to expenditures for a period of not less than ten years and shall not assert a claim of confidentiality or privilege with respect to any information or document reasonably required to evaluate expenditures.
- c. Temporal Scope of Each Budget and Accounting. Each annual budget, and each detailed accounting of all actual expenditures, shall have as its scope the fiscal year from April 1 through March 31, inclusive.
- d. Time for Review and Comment. Each Party shall have one month, measured from date of receipt, to review and provide input on each Budget submitted pursuant to this Paragraph V.C. By the end of the one month period, the reviewing Party must notify the other Parties if it requires more information to evaluate the Budget, specifying the information required. Such requested information shall be provided within seven days of receipt of such a request. Each Party shall have two additional weeks to review and provide input after receipt of the requested information.

e. Disagreements Regarding Expenditures.

- i. If there is a disagreement regarding a proposed expenditure in a Budget made by a Party, after there has been a reasonable opportunity for review and input pursuant to Paragraphs V.B and V.C of this Agreement, such disagreement shall be addressed as follows:
 1. Within seven days of the end of the time for review and comment described in Paragraph V.C.d above, each Party shall notify the other Parties in writing of the basis for its disagreement;
 2. Within 30 days after the Parties have been notified in writing of the basis for the disagreement, the Parties shall meet in person or via teleconference to discuss and make good faith efforts to resolve the disagreement; and
 3. If there is still a disagreement after discussion including at least one Executive of each Party, the Parties hereby reserve their rights for further action as may be authorized by law. For the purposes of this Agreement:
 - a. The County Administrator is an Executive of the County.
 - b. The Deputy Commissioner and General Counsel is an Executive of NYSDEC.
 - c. The Environmental Protection Bureau Chief is an Executive of OAG.
- ii. The Parties agree that their good faith efforts to resolve any disagreement regarding expenditures shall be resolved by considering whether the disputed expenditure falls squarely within the Purpose of this Agreement (Paragraph III above) and whether the disputed expenditure is made for the express use or uses described for each account in Paragraph V.B above.
- iii. The Parties agree not to make expenditures of any amount in dispute. However, the Parties further agree that if such dispute is not resolved within 45 days after the good faith efforts to resolve the dispute, as set forth in Paragraphs V.C.e.i and V.C.e.ii, have failed and no Party has commenced any related

legal action in that time period, such expenditure can be made by the Party that proposed the expenditure.

- f. Periodic Review. The Parties agree that they shall meet periodically, at least every five years, to discuss the current and future status of this Agreement and the administration of Settlement Funds remaining thereunder.

The Parties may identify additional protocols, standards, procedures, budgets or other directions to support access to or use of Settlement Funds.

VI. MODIFICATION AND AMENDMENT

- A. This Agreement may be amended by agreement of the Parties if it is determined that an amendment is consistent with the Purpose of this Agreement and with applicable law.
- B. The Parties can modify the allocation of funds, or the review, approval and reporting procedures, by mutual written agreement.
- C. Any amendment or modification of this Agreement, including its termination, shall be effective only if it is in writing and executed by all Parties to this Agreement.
- D. Any amendment to this Agreement must be consistent with the Purpose expressed in Section III of the first executed version of this Agreement.

VII. LIMITATION

The responsibilities and commitments identified in this Agreement are wholly subject to the lawful availability of Settlement Funds from the Settlement Account and the four accounts created therefrom. Nothing in this Agreement shall be construed as obligating the State or any public agency, their officers, agents, or employees to expend any funds in excess of those that are legally reimbursable from the Settlement Funds and authorized by law.

VIII. THIRD PARTY CHALLENGES OR APPEALS

The rights and responsibilities contained in this Agreement apply solely to the Parties. This Agreement is not intended to, nor shall it, vest rights in persons who do not represent the Parties who have executed this Agreement or who are not Parties to this Agreement.

IX. NONDISCRIMINATION

In performing this Agreement, the Parties will not discriminate against any person because of race, color, religion, sex, national origin, age, physical or mental handicap, sexual orientation, marital status or political affiliation.

X. PUBLIC REVIEW

The State made this Agreement available for public comment for 45 days beginning on _____, 2016. The Parties agreed to engage in further negotiations regarding the terms of this Agreement if public comments revealed previously unknown facts or considerations which indicate that this Agreement is not in the public interest.

XI. PUBLIC INFORMATION

None of the Parties will issue any written press release about this Agreement or the expenditure of Settlement Funds thereunder without the prior agreement of the other Parties. The Parties shall ensure that any written materials discussing the administration of this Agreement and/or the expenditure of Settlement Funds shall state that such funds are from the Settlement between the Parties and AkzoNobel.

IN WITNESS WHEREOF, the Parties hereto have signed this Memorandum of Understanding for Coordination of the Settlement Funds on the date appearing under their signatures.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Basil Seggos
Acting Commissioner
Department of Environmental Conservation

Date

OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL

Lemuel Srolovic
Environmental Protection Bureau Chief
Office of the New York State Attorney General

Date

LIVINGSTON COUNTY, NEW YORK

Eric R. Gott
Chairman of the Livingston County Board of Supervisors
Livingston County

Date

EXHIBIT A

(The Settlement)

BEGINS ON THE FOLLOWING PAGE

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
AND DEPARTMENT OF LAW**

**ORDER ON CONSENT
AND ADMINISTRATIVE
SETTLEMENT AGREEMENT**

**In the Matter of the AkzoNobel Salt Mine
Collapse in Livingston County, New York**

This ORDER ON CONSENT AND ADMINISTRATIVE SETTLEMENT AGREEMENT is entered into on this 23rd day of December, 2014, by and among the State of New York, the County of Livingston, New York ("Livingston County"), Akzo Nobel Salt Inc. and Akzo Nobel Inc.

RECITALS

Whereas, Akzo Nobel Salt Inc., a subsidiary of Akzo Nobel Inc. (collectively AkzoNobel), owned and operated an underground salt mine with associated surface structures located in the Towns of Leicester, Geneseo and York, Livingston County, New York, known as the Retsof Salt Mine; and

Whereas, the Retsof Salt Mine, approximately 6,000 acres in size and situated approximately 1,100 feet underground, was one of the largest producers of salt in the United States and one of the largest underground salt mines in the world; and

Whereas, on March 12, 1994, a portion of the ceiling of the Retsof Salt Mine collapsed, and groundwater from subsurface zones above the underground mine began to enter the mine at the rate of millions of gallons per day, resulting eventually in the complete flooding of the mine cavity with saturated brine; and

Whereas, impacts from the Retsof Salt Mine Collapse have included, among other effects, temporary aquifer dewatering, surface subsidence, damage to a State highway bridge, and private property damage including residential water well impacts; and

Whereas, since the Retsof Salt Mine collapse AkzoNobel, the State of New York and Livingston County have worked cooperatively to address the aforementioned impacts through a variety of remedial and investigatory efforts, including, among others, measures pursuant to the Memorandum of Understanding and Agreement entered into in August 1994 ("MOU I") and the Memorandum of Understanding and Agreement II entered into in May 1996 ("MOU II"), without admitting any liability or facts and while reserving all rights; and

Whereas, the State and the Department of Environmental Conservation (DEC) Commissioner are stewards and trustees of the natural resources of New York and are

responsible for the protection, conservation and management of those resources, including groundwater, for current and future generations; and

Whereas, the State and the Department of Law through the Attorney General are authorized as *parens patriae* under the public trust doctrine to redress harms to the State's natural resources; and

Whereas, the County of Livingston is a local government directly affected by the Retsof Salt Mine collapse, and has been and continues to be directly involved in efforts to respond to mine collapse impacts; and

Whereas, in 2005 AkzoNobel notified the State and Livingston County that monitoring data indicated that saline waters in the mine collapse area may be rising into areas where they may not have been present prior to the mine collapse; and

Whereas, on April 27, 2006 AkzoNobel and the DEC entered into DEC Consent Order No. R8-20060303-1 (2006 Consent Order), extended numerous times on consent, under which AkzoNobel conducted a pumping test and desalination program to address saline waters rising from the mine collapse area; and

Whereas, AkzoNobel has notified the State and Livingston County that monitoring data indicate that, due to downward pressure from gradual surface subsidence, saturated brine will be gradually squeezed up and out of the flooded mine through the collapse zone at the current rate of approximately 15.8 gallons per minute of 100% saturated brine, and that this will continue to occur for centuries, though AkzoNobel's experts project the rate brine is squeezed out of the mine will diminish over time and cease altogether in approximately 2,500 years; and

Whereas, AkzoNobel has advised the State that continuation of the pumping and desalination program for hundreds of years is impractical and untenable, and the DEC's and the U.S. Geological Survey's experts, who have studied the mine collapse and data from the pumping test, have publicly concurred, including during an open meeting held in November 2013 at SUNY Geneseo; and

Whereas, AkzoNobel has submitted to the State its final report on the saline waters rising from the mine collapse area and the results of the pumping test and desalination program, pursuant to paragraph I of the 2006 Consent Order and the terms of the report dated April 18, 2006 entitled "Pumping Test and Monitoring Plan for Akzo Brine Mitigation Project," attached to and made a part of the 2006 Consent Order; and the State, without endorsing the substance of all aspects of the report, has accepted the final report as fulfilling AkzoNobel's reporting obligations thereunder; and

Whereas, the last extension of the 2006 Consent Order ran to December 15, 2013, and the Consent Order terminated at the end of that day; and

Whereas, no person or entity, governmental or non-governmental, that is not a party to this Agreement has standing to enforce New York common law and statutory law to protect the

natural resources of the State affected already or potentially affected in the future as a result of the Incident, including without limitation the aquifers of the State;

Whereas, the State and Livingston County have agreed and represented that AkzoNobel has fulfilled all of its undertakings and obligations under or in relation to MOU I and MOU II and that AkzoNobel has no further obligations or performance due now or in the future under or in relation to these MOUs; and

Whereas, the State, Livingston County and AkzoNobel, in accordance with the terms prescribed and defined below, desire to fully and forever settle, resolve and release any and all claims the Releasors now have or may have in the future against the Released Persons with respect to the Incident and to terminate any and all further obligations of the Released Persons with respect to the Incident, including without limitation any and all obligations under or in relation to MOU I, MOU II and the 2006 Consent Order; and

Whereas, AkzoNobel and its insurers have relied on the foregoing agreements and representations of the State and Livingston County in entering into this Agreement; and

Whereas, AkzoNobel waives any right it may have to a hearing related to state statutory law claims covered by the Release and Covenant Not to Sue set forth in Section VI below, which the Releasors now have or may have in the future; consents to the issuing and entering of this Agreement; agrees not to contest the authority or jurisdiction of the Releasors to enter into or enforce this Agreement; and agrees to be bound by the terms, provisions and conditions of this Agreement.

NOW, having considered this matter and being duly advised, IT IS HEREBY ORDERED AND AGREED as follow.

I. DEFINITIONS

As used herein, the following words have the following meanings:

“Agreement” means this Order on Consent and Administrative Settlement Agreement.

“AkzoNobel” means Akzo Nobel Salt Inc. and Akzo Nobel Inc.

“Brine Mitigation Project” means the pumping and desalination facilities and operations situated above a portion of the former Retsof Salt Mine located in Livingston County, New York conducted pursuant to the 2006 Consent Order between DEC and AkzoNobel in case no. R8-20060303-1.

“Claims” means any and all obligations, demands, promises, covenants, agreements, contracts, understandings, representations, warranties, indemnities, claims, controversies, suits and causes of action (whether at law, in equity or otherwise and whether in contract, in tort, under statute, pursuant to common law or otherwise), trespasses, nuisances, liabilities, damages, judgments, settlements, or penalties, in each case whether past, present or future, known or unknown, accrued or unaccrued, and all requirements to investigate, mitigate, respond to or remediate threats, harm or damage to natural resources or the environment and any matter that

might be asserted under, pursuant to or in connection with the Incident, MOU I, MOU II or the 2006 Consent Order.

“2006 Consent Order” means the DEC Consent Order with AkzoNobel in case no. R8-20060303-1, originally entered into on April 27, 2006, and since extended multiple times on consent.

“Incident” means the March 1994 collapse of the Retsof Mine and any and all past, present and future consequences and impacts of that collapse, including without limitation, any movement, migration or release of water, brine or other substances from the Retsof Mine cavity, and including any impact of the same on groundwater or surface waters, and also any surface subsidence related to the Retsof Mine collapse.

“MOU I” means the Memorandum of Understanding and Agreement dated August 1994, between and among AkzoNobel, the DEC, the Attorney General of the State of New York, and Livingston County.

“MOU II” means the Memorandum of Understanding and Agreement II dated May 1996 between and among the same parties as MOU I.

“Parties” means AkzoNobel, the State and Livingston County, and “Party” means any one or more of AkzoNobel, the State and/or Livingston County.

“Released Persons” means AkzoNobel and their respective parents, subsidiaries and affiliates and all of the respective shareholders, investors, partners, joint venturers, boards and board members, directors, officers, employees, agents, representatives, attorneys, insurers, reinsurers, consultants, predecessors, successors and assigns of AkzoNobel and of their respective parents, subsidiaries and affiliates.

“Releasers” means Livingston County and the State, including, without limitation, its agencies, departments, and instrumentalities, or any division, board, commission or bureau of any agency or department, or instrumentality, and any public benefit corporation, public authority or commission at least one of whose members is appointed by the governor.

“Retsof Mine” means the salt mine located in Livingston County, New York, and owned and operated in March 1994 by Akzo Nobel Salt Inc.

“State” means the State of New York.

II. CONSIDERATION AND PAYMENT

As full consideration for this Agreement, AkzoNobel shall pay, or shall cause its insurers to pay, within 45 days of the effective date of this Agreement, the total sum of Twenty Million Dollars (\$20,000,000.00), jointly to the State and Livingston County. Payment to the State and Livingston County shall be made by wire transfer as set forth below:

Bank Name: Key Bank N.A., Empire State Plaza Branch, Albany NY
Bank Routing #: [REDACTED]
Account Title: "Attorney General Account"
Account Number: [REDACTED]
NYSOAG contact person: Dorcey Bennett, Revenues and Restitutions Unit,
Budget and Fiscal Management Bureau, (518) 486-3975

The State, as the trustee of New York's natural resources, and Livingston County, will use the proceeds from the payment received pursuant to this Settlement Agreement to address impacts from the Incident and to protect and restore the environment and natural resources of New York State. This may include, without limitation, reimbursement of costs to assess such impacts, funding of costs to monitor groundwater resources and subsidence, and funding of costs to implement, oversee, and administer various environmental protection and restoration activities. To this end the State and Livingston County will pursue a separate agreement, the terms and conditions of which shall be in the sole discretion of the State and Livingston County; provided, however, that the effectiveness of the terms hereof shall not be contingent upon the State and Livingston County pursuing or entering into a separate agreement.

If full payment of the \$20 million amount due to the State and Livingston County under this paragraph has not been tendered to the State by or on behalf of AkzoNobel or its insurers within 45 days of the effective date of this Agreement, the State may at any time thereafter provide written notice to AkzoNobel demanding full payment. If, within 15 days after delivery of such notice, AkzoNobel or its insurers fail to tender the full amount due, the State and Livingston County may enforce this agreement against AkzoNobel and have judgment against AkzoNobel for the full \$20 million due.

III. TERMINATION OF MOU I, MOU II AND CONSENT ORDER

Provided that the \$20 million payment set forth in the first paragraph of Section II of this Agreement has been made, to the extent they have not already terminated, MOU I, MOU II and the 2006 Consent Order shall terminate and be of no further force or effect. Further, effective upon their termination, any and all rights, obligations, liabilities and other matters arising under or in relation to MOU I, MOU II and the 2006 Consent Order are released and of no further force or effect.

IV. CESSATION OF BRINE MITIGATION PROJECT AND DISPOSITION OF RELATED INFRASTRUCTURE

Provided that the \$20 million payment to the State and Livingston County set forth in Section II of this Agreement has been made, no Released Person shall have any further obligation to recommence or continue the Brine Mitigation Project or any activities related thereto. AkzoNobel acknowledges that it may not use the Brine Mitigation Project equipment following the effective date of this Agreement in a manner that requires a permit or other permission from the State without securing such permit or permission; provided, however, the State agrees that AkzoNobel and/or its insurers or either of their contractors may, without the need for securing any permit or other permission from the State continue the Brine Mitigation Project and/or any activities related thereto, including intermittent pumping to aide in maintaining equipment in working order, for up to three months following the effective date of this Agreement so that the Brine Mitigation Project may be brought to an orderly termination. The State further agrees that it shall have no claim or entitlement to any of the facilities and equipment used in connection with the Brine Mitigation Project and that AkzoNobel and their insurers may use, sell, dispose of or otherwise deal with such equipment as they determine in their sole discretion (subject to applicable laws).

The parties further agree that AkzoNobel shall, within six months of the effective date of this Agreement, complete the dismantling and removal of the pumping and desalination facilities and operations associated with the Brine Mitigation Project located in the Hamlet of Cuylerville and otherwise restore and remediate the property at that location to a condition substantially consistent with its condition preceding construction of said facility, with the exception that AkzoNobel shall leave remaining and forego all rights at that time to, and have no further obligations or liabilities thereafter with respect to, the following: the large cover-all building; the small cover-all building; the foundation for the main crystallizer building; the concrete block and office and work area portions of the plant; the storm-water drainage system to the front pond; the concrete work at the north end of the brine lagoon, including storage basin, attached pump pit, and associated drainage piping; the pine trees and flag pole in front of said facility; and all roads and lighting.

V. FURTHER OBLIGATIONS

Provided that the \$20 million payment to the State and Livingston County set forth in the first paragraph of Section II of this Agreement has been made, after the effective date of this Agreement, the Released Persons shall have no further obligations of any kind with respect to the Incident, but shall continue to be subject to all existing statutory, regulatory, or common law obligations unrelated to the Incident. For example, in the event that it has not already done so prior to the effective date of this Agreement, AkzoNobel shall complete ongoing reclamation of the Retsof and Sterling sites under New York State's Mined Land Reclamation Law, permit #80081, DEC ID#8-2452-00005/00001. Additionally, AkzoNobel shall plug and close all pumping and monitoring wells it currently operates that were related to the Brine Mitigation Project, except those that belong to third parties and are concurrently being used for other purposes. A list of wells to be plugged is identified on Attachment A. AkzoNobel shall submit

the appropriate completed Notice of Intention to Plug and Abandon forms with detailed plugging plans to the DEC's Mineral Resources staff within six months of the effective date of this Agreement. All plugging and abandonment of the listed wells, as required by 6 NYCRR Part 555, should be completed within 2 years of the effective date of this Agreement. Except as provided in this paragraph with respect to wells to be plugged, AkzoNobel shall have no further obligations or liabilities after the Effective Date with respect to the any and all wells listed on Attachment A or any wells involved in the water quality monitoring program which are not to be plugged and closed, nor shall AkzoNobel have any further obligations or liabilities with respect to water quality monitoring related to the Incident. AkzoNobel shall also have no further obligations or liabilities after the Effective Date with respect to any and all subsidence monitoring related to the Incident or subsidence monitoring monuments.

VI. RELEASE AND COVENANT NOT TO SUE

A. Provided that the \$20 million payment to the State and Livingston County set forth in the first paragraph of Section II of this Agreement has been made, (i) the Releasors release the Released Persons and each of them from any and all Claims related to the Incident and (ii) the Releasors agree and covenant that they will not assert any claim and will not institute any action or proceeding, in law or in equity, in any court, agency, or tribunal, against any of the Released Persons, arising out of, in connection with, or related to the Incident.

B. Without limiting the generality of the language in Section VI.A. above, the Parties intend that the release contained in this Agreement shall apply to preclude the Releasors from asserting claims under any and all legal theories which they might now or in the future assert against any of the Released Persons related to the Incident. Thus, the Releasors are releasing the Released Persons not only from (i) any and all claims for negligence, strict liability, trespass, public nuisance, private nuisance, and "natural resources damages" under state common law or statutory law, and from any and all claims for "natural resources damages" that might presently exist under federal common law, CERCLA, or other federal statute or regulation related to the Incident, but also from (ii) any and all claims under any other legal theory, under state, local, federal, or international law, that might be asserted in the future because of newly discovered facts and circumstances related to the Incident, changes in laws or regulations, changes in the interpretation of laws, regulations, or principles of law by the courts, or otherwise.

C. The releases contained in this section shall in no way affect the existing statutory, regulatory, or common law obligations unrelated to the Incident, as set forth in Section V above.

VII. MISCELLANEOUS PROVISIONS

A. *Modifications.* No alteration, change or modification of this Agreement shall be effective unless it is made in a formal writing executed on behalf of each party.

B. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

C. *Partial Invalidity.* If any provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each other term or provision shall be valid and enforceable to the fullest extent permitted by law.

D. *Successors and Assigns.* This Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns of the Parties.

E. *Rights of Third Parties.* Nothing herein is intended nor is it to be construed as affecting in any manner whatsoever the rights, if any, of any non-governmental person, private property owner, or private entity to seek damages or any other relief of any description for their own injuries arising from the Incident. All Released Persons shall have the right to invoke and enforce the Release and Covenant Not to Sue set forth in Section VI, above, in any matter, proceedings or forum, without limitation.

F. *Further Acts.* Each Party covenants and agrees that it will at any time and from time to time do, execute, acknowledge and deliver or will cause to be done, executed, acknowledged and delivered any further acts, documents, or instruments as may reasonably be required by the other Party in order to carry out fully and effectuate the promises and covenants herein provided.

G. *Counterparts.* This Agreement may be signed in several counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one and the same instrument. Any counterpart to which is attached the signatures of all parties shall constitute an original copy of this Agreement.

H. *Notices.* Notices hereunder shall be delivered in writing by hand delivery, commercial delivery service or First Class U.S. Mail and shall be deemed effective upon receipt, as follows:

Service Upon the State

Timothy Hoffman, Esq.
Assistant Attorney General
Environmental Protection Bureau
New York State Attorney General's Office
350 Main Street, Suite 300A
Buffalo, New York 14202

and

Andrew Guglielmi, Esq.
Office of General Counsel
NYSDEC
625 Broadway, 14th Floor
Albany, NY 12233-1500

Service Upon Livingston County

Office of the County Attorney
Livingston County Government Center
6 Court Street
Room 302
Geneseo, NY 14454

Service Upon AkzoNobel

Akzo Nobel Inc.
525 W. Van Buren Street
Chicago, Illinois 60607
Attention: Legal Director, Americas

I. *Effective Date.* The effective date of this Agreement is the date that the DEC Commissioner's representative, the Attorney General's representative, the County's representative, and AkzoNobel's representatives have all signed it.

-- Remainder of this Page Intentionally Left Blank --

**In the Matter of the AkzoNobel Salt Mine
Collapse in Livingston County, New York
Order on Consent and Administrative Settlement Agreement**
Signature Page 1 of 4

New York Department of Environmental Conservation

By:

Name:

Title:

Date:



Joseph J. Martens
Commissioner
12/22/14

**In the Matter of the AkzoNobel Salt Mine
Collapse in Livingston County, New York
Order on Consent and Administrative Settlement Agreement
*Signature Page 2 of 4***

Attorney General, State of New York

By: _____

Name:

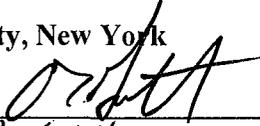
Title:

Date:


TIMOTHY W. HOFFMAN
Assistant Attorney General
12-22-14

**In the Matter of the AkzoNobel Salt Mine
Collapse in Livingston County, New York
Order on Consent and Administrative Settlement Agreement
*Signature Page 3 of 4***

Livingston County, New York

By: 

Name: Eric R. Goddard

Title: Chairman - Board of Supervisors

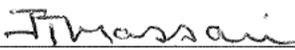
Date: 12/23/14

In the Matter of the AkzoNobel Salt Mine
Collapse in Livingston County, New York
Order on Consent and Administrative Settlement Agreement
Signature Page 4 of 4

Akzo Nobel Salt Inc.

By: 
Name: CHARLES SK SCUDDER
Title: VICE PRESIDENT & SECRETARY
Date: DEC 19, 2014

and

By: 
Name: JEFFREY T MASSARI
Title: ASSISTANT SECRETARY
Date: 12/23/14

Akzo Nobel Inc.

By: 
Name: CHARLES SK SCUDDER
Title: VICE PRESIDENT & SECRETARY
Date: DEC 19, 2014

and

By: 
Name: JEFFREY T MASSARI
Title: ASSISTANT SECRETARY
Date: 12/23/14



Attachment A

List of Wells to be Plugged and Abandoned

Well	Total Well Depth (feet)	Well Diameter (inches)
9409	925	6
9422	520	5
9446	498.7	4
9568	480	6
9572	1100	6
0401	692	4
0402	850	6
0403	640	8.75
0404	632	8.75
0405	633	6
0501	520	8.75
0502	630	8.75
0503	630	8.75
0504	650	8.75
0505	534	6
0506	630	6
0507	833	8
0508	733	8
0509	830	8
0510	733	8
0511	832	8
0512	732	8
9901	319	6
9902	312	6
9903	291.5	6
9904	278.5	6
9905	227.5	6
9570	207	8
9571	107	8
9440	~312	6

EXHIBIT B

(NYSDEC Commissioner Policy 44)

BEGINS ON THE FOLLOWING PAGE

CP-44 / Natural Resource Damages Policy

New York State Department of Environmental Conservation

DEC Policy

Issuing Authority: Alexander B. Grannis, Commissioner

Date Issued: 1/21/2010

Latest Date Revised:

I. Summary:

This Policy identifies the commitment by the Department of Environmental Conservation (Department) to the operation of a comprehensive Natural Resource Damages (NRD) Program to enable the Commissioner, as the designated Trustee for State natural resources, to fulfill his/her legal obligation to act on behalf of the public to recover damages for injuries to natural resources and to use any recovered damages to restore or replace those injured resources.

II. Policy:

It is the policy of the Department of Environmental Conservation to ensure that the State's natural resources are protected, and where damaged, such resources are restored or replaced in accordance with the law. To ensure the success of this policy, an efficient and effective NRD Program is needed. Therefore, through this policy, the Commissioner reaffirms this commitment and designates the Division of Fish, Wildlife and Marine Resources (DFWMR) in conjunction with the Office of General Counsel (OGC) to jointly fulfill the Commissioner's obligations as the natural resource Trustee for the State. Other Divisions within the Department with responsibility for regulation, investigation and/or cleanup of contaminants including but not limited to the Divisions of Environmental Remediation (DER), Solid and Hazardous Materials (DSHM), and Water (DOW) are also charged with supporting and furthering the NRD Program.

The provisions of this Policy are not intended to and shall not be interpreted to restrict the ultimate authority and discretion of the Commissioner. Further, the policies and procedures set forth in this document are intended solely for the use and guidance of Department personnel; they are not intended to create any substantive or procedural rights.

III. Purpose and Background:

On November 30, 1987, Governor Cuomo appointed the Commissioner of Environmental Conservation to be the Trustee for New York State's natural resources under applicable federal law, including the Comprehensive Environmental Response, Compensation and Liability Act, the Clean Water Act, and the Oil Pollution Act, complementing the Department's responsibilities under the New York Environmental Conservation Law, Article 12 of the New York Navigation Law, and other applicable law, to conserve, improve and protect New York's natural resources. The purpose of this policy is to reaffirm the Department's commitment to a comprehensive program to pursue natural resource damage claims and to use damage recoveries to restore injured resources to the maximum extent possible.

This Policy supersedes O&D Memoranda #88-13, #93-10, and #94-28.

IV. Responsibility:

The DFWMR and the OGC shall work jointly to evaluate, develop and pursue potential cases involving NRD. The DFWMR conducts or coordinates NRD assessments and implements or directs the implementation of restoration projects. OGC advises the DFWMR on legal matters, negotiates the terms of agreements and settlements, and pursues cases as needed. Economic expertise and support for the NRD Program is provided by the OGC Economics Unit, which is responsible for conducting or coordinating the economic analysis needed to support the settlement or prosecution of cases and for managing the NRD accounts. As appropriate, staff in other programs and Divisions of the Department (e.g. DER, DSHM, DOW) will coordinate and cooperate with DFWMR and OGC to identify potential NRD claims and to pursue those claims. When restoration projects involve the conveyance of an interest in land or planning for open space, OGC and DFWMR shall coordinate and cooperate with the Division of Lands and Forests as early as possible to consider all options before a final determination is made regarding the conveyance and to ensure that the ultimate conveyance is fully approved as required by law. Finally, the participation of Regional staff in investigating and evaluating cases is essential to an effective NRD program.

The responsibility for implementing, maintaining, interpreting and updating this policy lies with DFWMR, in conjunction with the OGC.

V. Related References:

- Organization and Delegation Memoranda #88-13 dated April 15, 1988, #93-10 dated April 29, 1993, and #94-28 dated August 8, 1994 (all hereby superseded).
- New York State Department of Environmental Conservation Civil Penalty Policy dated 6/20/90, Section IV(D)(2)(a)
- Final Report of the Quality Project Team for Natural Resource Damages dated 3/31/97

EXHIBIT C

Details and Deposit Instructions

Account Dedicated to Water Supply Infrastructure Improvement, Repair and Maintenance Related to the Incident

Note: The account dedicated to water supply infrastructure improvement, repair and maintenance is expected to have an initial balance of Eleven Million Dollars (\$11,000,000.00) plus interest accrued on Eleven Million Dollars (\$11,000,000.00).

Deposit Instructions:

The Attorney General's Office will remit a check payable to "**Livingston County Water Supply Infrastructure Reserve Account**" in the amount of the full initial balance of the account dedicated to Water Supply Infrastructure Improvement, Repair and Maintenance within the Area Affected by the Incident. This check will be mailed to the address below:

Amy L. Mann
Livingston County Government Center
6 Court Street
Room 203
Geneseo, NY 14454-1043

Upon receipt of the check, Amy Mann will ensure that the check is timely deposited in the new account, referenced above, that has been created at JP Morgan Chase to hold these funds exclusively.

EXHIBIT D

Details and Deposit Instructions

Account Dedicated to Surface Water and Water Supply Improvement and Protection Projects to Protect the Drinking Water Sources for the Communities Impacted by the Incident

Note: The account dedicated to surface water and water supply improvement and protection projects is expected to have an initial balance of Five Million Dollars (\$5,000,000.00) plus interest accrued on Five Million Dollars (\$5,000,000.00).

Deposit Instructions:

The Attorney General's Office will remit a check payable to "**Livingston County Surface Water Protection/Improvements Reserve Account**" in the amount of the full initial balance of the account dedicated to Surface Water and Water Supply Improvement and Protection Projects to Protect the Drinking Water Sources for the Communities Impacted by the Incident. This check will be mailed to the address below:

Amy L. Mann
Livingston County Government Center
6 Court Street
Room 203
Geneseo, NY 14454-1043

Upon receipt of the check, Amy Mann will ensure that the check is timely deposited in the new account, referenced above, that has been created at JP Morgan Chase to hold these funds exclusively.

EXHIBIT E

Details and Deposit Instructions

Account Dedicated to Monitoring Groundwater and Subsidence within the Area Affected
by the Incident

Note: The account dedicated to monitoring groundwater and subsidence is expected to have an initial balance of Two Million Nine Hundred Seventy-Five Thousand Seventy-Four Dollars and Ninety-Nine Cents (\$2,975,074.99) plus interest accrued on Three Million Dollars (interest on \$3,000,000.00).

Deposit Instructions:

The Attorney General's Office will remit a check payable to "**Commissioner of NYSDEC – NRD Fund**" in the amount of the full initial balance of the account dedicated to monitoring groundwater and subsidence within the area affected by the incident. This check will be mailed to the address below:

New York State Dept. of Environmental Conservation
Office of General Counsel
ATTN: Caryn I. Bower, Esq.
625 Broadway, 14th Floor
Albany, NY 12233-1500

Upon receipt of the check, Caryn Bower will coordinate with the NRD Fund Manager (Sharon Brooks) and others to ensure that the check is timely deposited in the dedicated Akzo subfund account that has been created within the NRD Fund held at the Department of Environmental Conservation.

EXHIBIT F

Details and Deposit Instructions

Account Dedicated to Providing a Contingency Fund to Address Potential Future Harms
from the Incident

Note: The account dedicated to providing a contingency fund is expected to have an initial balance of One Million Dollars (\$1,000,000.00) plus interest accrued on One Million Dollars (\$1,000,000.00).

Deposit Instructions:

The Attorney General's Office will remit a check payable to "**Livingston County Water Contingency Reserve Account**" in the amount of the full initial balance of the account dedicated to Providing a Contingency Fund to Address Potential Future Harms from the Incident. This check will be mailed to the address below:

Amy L. Mann
Livingston County Government Center
6 Court Street
Room 203
Geneseo, NY 14454-1043

Upon receipt of the check, Amy Mann will ensure that the check is timely deposited in the new account, referenced above, that has been created at JP Morgan Chase to hold these funds exclusively.

EXHIBIT G

Template for Annual Budgets

Annual Budget for Proposed Expenditures from Account Dedicated to

[insert purpose of account here]

Covering Fiscal Year [YEAR],
(April 1, [YEAR] through March 31, [YEAR])

Balance of this account as of [DATE] : \$(balance)
(Attach bank statement or other proof of account balance)

Scope of Work:

Short Identifier [e.g. "Groundwater Monitoring"] and Project Number [X of Y]	Project Description <i>(May refer to statements of work, position descriptions, requests for proposals, and any other documents attached hereto.)</i>	Project Costs Anticipated for the Fiscal Year <i>(Separate costs into categories: Contractual, Personal Service, Non-Personal Service, Supplies, Travel, etc.)</i>

Submitted by: _____

Date: _____

[Name]

Party Representative

for _____ *[Party]* _____

EXHIBIT H

Template for Annual Accountings

Detailed Accounting of Expenditures from Account Dedicated to

[insert purpose of account here]

Covering Fiscal Year [insert year],
April 1, [YEAR] through March 31, [YEAR]

*****Attach supporting documentation (bank statements, reports, invoices, etc.)*****

Short Identifier [e.g. "Groundwater Monitoring"], and Project Number [X of Y] <i>(from annual budget or subsequent update)</i>	Project Description, and Description of Work Completed on This Project During the Fiscal Year	Project Costs Anticipated for the Fiscal Year <i>(from annual budget or subsequent update)</i>	Actual Project Costs Incurred During the Fiscal Year	Explanation of Difference (if any) Between Anticipated Costs and Actual Costs

Submitted by: _____

Date: _____

[Name]
Party Representative
for _____ [Party]